

# MT LEGISLATIVE HISTORY

Chapter 233 1981

Bill H \_\_\_\_\_ S 328

Original bill & hist. ☒ C

H. Committee on Loc. Gov't. 2/17

S. Committee on Loc. Gov't. 1/30

Hearing Date(s) 3/7 \_\_\_\_\_ C

Hearing Date(s) 2/10 \_\_\_\_\_ C

3/14 \_\_\_\_\_ C

2/11 \_\_\_\_\_ C

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Date Out \_\_\_\_\_ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

SENATE BILL NO. 328

INTRODUCED BY THOMAS

IN THE SENATE

|                   |                                                                       |
|-------------------|-----------------------------------------------------------------------|
| January 30, 1981  | Introduced and referred to Committee on Local Government.             |
| February 11, 1981 | Committee recommend bill do pass. Report adopted.                     |
| February 12, 1981 | Bill printed and placed on members' desks.                            |
| February 13, 1981 | Second reading, do pass.                                              |
| February 14, 1981 | Correctly engrossed.                                                  |
| February 16, 1981 | Third reading, passed.<br>Ayes, 47; Noes, 0.<br>Transmitted to House. |

IN THE HOUSE

|                   |                                                           |
|-------------------|-----------------------------------------------------------|
| February 17, 1981 | Introduced and referred to Committee on Local Government. |
| March 16, 1981    | Committee recommend bill be concurred in. Report adopted. |
| March 21, 1981    | Second reading, concurred in.                             |
| March 24, 1981    | Third reading, concurred in.<br>Ayes, 97; Noes, 0.        |

IN THE SENATE

|                |                                                                                           |
|----------------|-------------------------------------------------------------------------------------------|
| March 25, 1981 | Returned from House. Concurred in. Sent to enrolling.<br><br>Reported correctly enrolled. |
|----------------|-------------------------------------------------------------------------------------------|

*Amended* BILL NO. 328

INTRODUCED BY Thomas

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS ON MUNICIPAL VACANCY IN OFFICE TO INCLUDE THE SAME GROUNDS APPLICABLE TO VACANCY IN STATE OFFICES; AMENDING SECTION 7-4-4111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-4-4111, MCA, is amended to read:

"7-4-4111. Determination of vacancy in municipal office. ~~(1) If anyone either elected or appointed to office fails for 10 days to qualify as required by law or enter upon his duties at the time fixed by law then such an~~ office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21,

part 1, that he is mentally ill;

(3) his resignation;

(4) his removal from office;

~~(2)(5) If any officer absents himself his absence~~ from the city or town continuously for 10 days without the consent of the council; or

~~(6) his own neglect openly neglects or refuses refusal to discharge his duties; such office may be declared vacant by the council;~~

~~(3)(7) If any officer removes from his ceasing to be a resident of the city or town or in the case of an any alderman from his ceasing to be a resident of his ward; such office must be declared vacant by the council;~~

~~(8) his ceasing to discharge the duty of his office for a period of 3 consecutive months except when prevented by illness or when absent from the city or town by permission of the governing body;~~

~~(9) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;~~

~~(10) his refusal or neglect to file his official bond within the time prescribed;~~

~~(11) the decision of a competent tribunal declaring void his election or appointment."~~

-End-

## COMMITTEE ON LOCAL GOVERNMENT

| SENATE<br>BILL NO. | ENTERED<br>COMM. | DATE<br>CONSIDERED | OUT OF<br>COMM. | DO NOT<br>PASS<br>DATE | DO NOT<br>PASS<br>DATE | DO PASS<br>AS AMEND.<br>DATE | BE CON-<br>CURRED IN<br>DATE | BE CONC. IN<br>AS AMENDED<br>DATE | BE NOT CON-<br>CURRED IN<br>DATE |
|--------------------|------------------|--------------------|-----------------|------------------------|------------------------|------------------------------|------------------------------|-----------------------------------|----------------------------------|
| 167                | 01/17/81         | 01/31/81           | 02/18/81        |                        | 02/18/81               |                              |                              |                                   |                                  |
| 170                | 01/17/81         | 01/27/81           | 01/27/81        |                        |                        | 01/27/81                     |                              |                                   |                                  |
| 171                | 01/17/81         | 01/27/81           | 01/27/81        | 01/27/81               |                        |                              |                              |                                   |                                  |
| 173                | 01/17/81         | 01/27/81           | 01/27/81        |                        |                        | 01/27/81                     |                              |                                   |                                  |
| 175                | 01/17/81         | 02/05/81           | 02/18/81        |                        |                        | 02/18/81                     |                              |                                   |                                  |
| 177                | 01/17/81         | 02/14/81           | 02/18/81        |                        | 02/18/81               |                              |                              |                                   |                                  |
| 204                | 01/20/81         | 02/03/81           | 02/10/81        |                        |                        | 02/10/81                     |                              |                                   |                                  |
| 215                | 01/20/81         | 02/03/81           | 02/18/81        |                        |                        | 02/18/81                     |                              |                                   |                                  |
| 236                | 01/22/81         | 02/03/81           | 02/03/31        |                        |                        | 02/03/81                     |                              |                                   |                                  |
| 256                | 01/23/81         | 02/05/81           | 02/05/81        |                        |                        | 02/05/81                     |                              |                                   |                                  |
| 302                | 01/28/81         | 02/05/81           | 02/05/81        | 02/05/81               |                        |                              |                              |                                   |                                  |
| 303                | 01/28/81         | 02/05/81           | 02/05/81        | 02/05/81               |                        |                              |                              |                                   |                                  |
| 325                | 01/29/81         | 02/10/81           | 02/14/81        |                        |                        | 02/14/81                     |                              |                                   |                                  |
| 328                | 01/30/81         | 02/10/81           | 02/10/81        | 02/10/81               |                        |                              |                              |                                   |                                  |
| 343                | 01/31/81         | 02/10/81           | 02/18/81        |                        |                        | 02/18/81                     |                              |                                   |                                  |
| 353                | 02/02/81         | 02/12/81           | 02/14/81        | 02/14/81               |                        |                              |                              |                                   |                                  |

(Use Separate Sheet for Senate, House Bills, and Resolutions)

year. They need something similar to the state matrix. This is not a sacred document, they are just asking to be put on a matrix system so they can stay at home so they don't have to go to the legislature all the time.

Senator Hammond asked if Mr. Hufstetler was on the merit system now

Mr. Hufstetler said he works for the district court judges. They feel they need to be working on the judicial basis because of the flexibility. They need to be able to meet their own needs.

Senator Hammond asked who employs him.

Mr. Hufstetler said the judges hire them. The county pays them.

Senator Conover asked what the top pay is throughout the state for youth probation officers.

Mr. Johnson said \$20,000. He added they do not want to be attached under the state but do want to remain with the district judges.

CONSIDERATION OF SENATE BILL NO. 328:

AN ACT TO REVISE THE PROVISIONS ON MUNICIPAL  
VACANCY IN OFFICE TO INCLUDE THE SAME GROUNDS  
APPLICABLE TO VACANCY IN STATE OFFICES.

Senator Van Valkenburg said Senator Thomas introduced this bill at Senator Van Valkenburg's request, that was why he was presenting the bill to the committee. They had a situation in the last biennium where a city council member suffered a heart attack and, as a result, was severely incapacitated for a great length of time. This individual was, for all practical purposes, not functioning mentally. He was placed in a hospital and then in a nursing home. He has since recovered to some degree and is serving on the council again. The question is whether his seat was vacant or not on the city council and if he was neglecting his duties. This bill puts in place what is existing law with respect to vacancies in state offices. This provides a clear definition as to whether an office is vacant or not if the person is determined to be seriously mentally ill. If this is a law that applies to all state officers, it should apply to municipal officers. This is no attempt to go after that individual but if it should happen again, he feels the law should be clear on this.

Dan Mizner of the League of Cities and Towns said this is not a problem just in Missoula but in other places in the state. This gives guidelines and the League supports it.

There were no further proponents and no opponents of this bill. Senator McCallum then called for questions from the committee.

Senator McCallum asked if in most offices, if you miss a certain number of meetings your seat is automatically vacated - or is that in the bylaws.

Mr. Mizner said you may be absent with the consent of the council. We need an ordinance in the cities now, we shouldn't wait until a situation like this occurs in each city..

Senator Hammond asked if there is a way to do this on the city level.

Mr. Mizner said if there are no guidelines in the law, some cities will not do anything about it until after a situation such as this occurs.

Senator O'Hara moved Senate Bill No. 328 DO PASS. This motion passed unanimously.

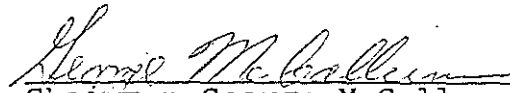
DISPOSITION OF SENATE BILL NO. 204: Senator Van Valkenburg moved that Senate Bill No. 204 be amended to provide that the age matter be reduced so it encompasses up to an individual's 35th birthday and that it be amended so we adopt the language recognizing age as a bona fide qualification for this particular line of work.

Senator McCallum said the lobbyists for the firemen agreed to these amendments.

Senator Van Valkenburg's motion passed with all but Senator Hammond in favor.

Senator Van Valkenburg moved that Senate Bill No. 204 DO PASS as amended. Senator Hammond was opposed, all others voted aye.

There being no further business before the committee, the meeting was adjourned at 2:25.

  
Chairman George McCallum

# STANDING COMMITTEE REPORT

February 16 ..... 19 81

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 328

Respectfully report as follows: That SENATE Bill No. 328

DO PASS

LOCAL GOVERNMENT COMMITTEE

47th Legislature (1981)

| Bill No. | Subject Matter                                                                                                                       | Date In | Sponsor         | Hearing Date | Committee Action              | Date Out |
|----------|--------------------------------------------------------------------------------------------------------------------------------------|---------|-----------------|--------------|-------------------------------|----------|
| SB 256   | To reduce the population prerequisite for municipal incorporation; and providing an immediate effective date                         | 2/14    | Hammond Etchart | March 7      | AS AMENDED BE<br>CONCURRED IN | 3/19     |
| HB 781   | Authorizing a local governing body to contract with a financial institution for a repurchase agreement; providing for bid procedures | 2/16    | Harper          | 2/20         | DO PASS AS AMENDED            | 2/21     |
| HB 790   | to replace metropolitan sanitary and/or storm sewer districts under the regulatory authority of the Public Service Commission        | 2/16    | Daily           | 2/20         | DO PASS AS AMENDED            | 2/21     |
| HB 805   | To simplify and economize the provision of public services                                                                           | 2/18    | Kitselman       | 2/20         | DO PASS                       | 2/21     |
| SB 133   | Requiring landowner approval before zoning measures are adopted by county commissioners                                              | 2/23    | John Manley     | March 10     | BE NOT CONCURRED IN           | 3/23     |
| SB 328   | Revising provisions on municipal vacancy in office                                                                                   | 2/19    | Bill Thomas     | March 7      | BE CONCURRED IN               | 3/14     |



through GEORGE FREEMAN, the planning board director.

AL THELEN said he thinks it is important to distinguish between zoning and planning. The two zoning commissions operate independently. The joint planning board is responsible for the planning operation and primarily hear subdivision review and things related to that. They have the authority to hire the staff of about 15 people. There is an executive committee of that joint city-county planning board that has that function. The concern of the Billings people was that function had nothing to do with the strike. When I came here a year and a half ago, the city and county commission felt that that was their number one priority.

REP. KITSELMAN commented that one of the things against being part of that is one of the protections that works well with that is the fact that they are not under the thumb of either the city or the county and are not unduly influenced by either one of them.

AL THELEN said he thinks the legislation disagrees with whether that works well or not. I guess the legislation would allow them to change that since they are the ones really responsible. My personal concern is that I feel there is enough concern by the elected officials that we could lose that planning operation if they are not able to get control. I feel the elected officials should have that control.

REP. PISTORIA said he is not speaking for or against the bill. I am familiar with city-county planning boards and there are laws governing them. When you have that, you have a four and one half mile radius. Then we have the county planning board and of course they operate outside of this zone. They have worked well. The thing that concerns me is if they did combine, would it be possible that the city-county board might be more powerful than the county residents outside of this area and they wouldn't get any appointments? Would that be possible?

AL THELEN said the city and county commission under this bill could organize how they wanted, but both sides would have to agree before that took place. I think it might have some effect in the Great Falls area but it would have to be agreed upon separately between the cities and the counties.

CHAIRMAN BERTELSEN closed the hearing on Senate Bill 236.

SENATE BILL 328 - Sponsored by SENATOR BILL THOMAS.

SENATOR FRED VAN VALKENBURG from District 50 said with the committee's permission, he'd like to present Senate Bill 328. This bill was introduced by SENATOR THOMAS at my request. That is why I'm doing the work on it and carrying the bill. Senate

Bill 328 would simply say that a vacancy in a municipal office would be on the same grounds as a vacancy in a state office. The present law which was written a long time ago with respect to municipal offices is somewhat vague and unclear. It has presented some difficulty in interpretation. This bill was drafted for that reason so it would make municipal offices subject to the same kinds of definition for vacancy as you or I serving as state legislators.

The particular situation that arose from Missoula involved a city councilman who suffered a heart attack and was unable to do anything for virtually a year. His constituents went unrepresented for that time because no one could agree whether the office was vacant or not. He is now back on the city council. This is not intended to go back at him in any fashion but it is intended for the future to make a little more clear whether a vacancy in an office exists. It simply puts city officers on the same basis as you or I.

PROPOSERS FOR SENATE BILL 328

DAN MIZNER said he represents the Montana League of Cities and Towns. This does give us a law that we can follow. We do know that these things can happen in a city. This gives the city a ruling to fill the vacancy.

CHAIRMAN BERTELSEN asked if there were further proposers. There were none, so he asked if there were any opponents. There were none. He asked SENATOR VAN VALKENBURG if he wished to close.

SENATOR VAN VALKENBURG said "I close."

QUESTIONS FROM THE COMMITTEE

REP. ANDREASON commented this is apparently something which has been in the law for a while. He asked Senator Van Valkenburg why the 10 day limit on line 24?

SENATOR VAN VALKENBURG said he didn't know and referred the question to LEE HEIMAN.

LEE HEIMAN said it is tradition.

REP. KESSLER asked if the 10 days refers to a state official too?

LEE HEIMAN said it is from general law which includes state officers and anyone where there is no specific rule.

REP. KESSLER asked Lee if there is a limited time state legislators can be gone?

LEE HEIMAN answered yes.

REP. BERTELSEN said yes, there is a limit if you are out of the state for a certain length of time.

REP. ANDREASON wondered what the provisions are for mental health as mentioned on line 20, page 1?

SENATOR VAN VALKENBURG said basically in current law a determination can be made by a District Court Judge that an individual is seriously mentally ill. This is defined in the statutes as having to do with a mental disorder and whether the individual is a danger to himself or others.

REP. PISTORIA asked what would happen in the case where a person has a nervous breakdown from overwork? Normally this type of thing allows the person to return to work. Would this affect a fellow like that?

SENATOR VAN VALKENBURG said that lines 8 through 11, page 2, provide that if you are unable to discharge the duties of office for three months, except when prevented by illness, your office can be considered vacated, after the three months, but I think if you have a traditional illness, rather than a mental illness, you continue to hold the office.

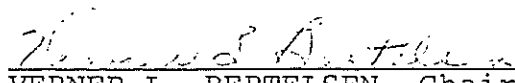
REP. SWITZER commented that county commissioners do not have permission to leave the county.

CHAIRMAN BERTELSEN said there is a restriction that you need permission from fellow board members.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he closed the hearing on SENATE BILL 328.

REP. VINGER asked Lee if he would work up a couple of amendments on Senate Bill 328, and he said he would do so.

The meeting adjourned at 8:30 a.m.

  
VERNER L. BERTELSEN, Chairman

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STANDING COMMITTEE REPORT

March 14, 1931

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 328

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS ON MUNICIPAL VACANCY IN OFFICE TO INCLUDE THE SAME GROUNDS APPLICABLE TO VACANCY IN STATE OFFICES; AMENDING SECTION 7-4-4111, MCA."

Respectfully report as follows: That SENATE Bill No. 328

BE CONCURRED IN

~~DO PASS~~

Verner L. Bertelsen  
Chairman.